IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1186 of 2001
(Old No. 351 of 1979)

United India Insurance Co. Ltd
Head Office at 24, Whites Road
Madras 600014
Through its senior Divisional Manager
Lucknow, office at 28/45 Ashok Marg
Lucknow 226001 …….Defendant/Appellant.

Versus

1. Km Kusum Lohani
   minor daughter under the guardianship
   of her father, Sri Kewlanand Lohani
   R/o Kathgharia, Tehsil Haldwani
   District –Nainital
2. Shri Narain Singh
   S/o Sardar Singh
   R/o Rajpura, Haldwani
   District- Nainital ……..Respondents.

Shri Naresh pant, learned counsel for the appellant.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 110-D of the Motor Vehicles Act, 1939, is directed against the judgment and award dated 14.02.1979, passed by Motor Accident Claims Tribunal, Nainital in M.A.C. Case No. 37 of 1978.

2. Brief facts of the case are that the claimant/respondent- Kusum Lohani, aged 15 ½ yea--s alongwith her mother was going on her bicycle on 09.01.1978 from Haldwani to Kathgodam. Suddenly a truck registration No. U.S.R. 2936, which was being driven rashly and negligently by its driver, coming from

the opposite side, dashed with the bicycle. Claimant's mother died on the spot and claimant suffered injuries. The claim petition from which this appeal has arisen pertains to the compensation awarded for the injuries suffered by the claimant. A sum of Rs. 10,000/- was claimed as compensation on account of injuries sustained by the claimant/respondent with break-up as under:-

1.	For pain and sufferings	-Rs. 3,000/-
2.	For medicine	-Rs. 200/-
3.	Loss of studies	-Rs. 300/-
4.	For diet money	-Rs. 500/-
5.	For mental shock & agony	-Rs. 2,000/-
6.	Loss of beauty due to ugly Scars arising out of wounds	-Rs. 4,000/-

3. United India Fire and General Insurance Company (appellant), contested the claim petition and field its written statement. But did not deny that the vehicle was insured with it. The defence taken by the drive of the vehicle was that claimant herself was negligent in crossing the road, on bicycle.

4. Motor Accident Claims Tribunal framed the following issued:-

1. *Whether the accident was caused due to rash and negligent driving on the part of the driver of the truck registration No. U.S.R. No. 2936?*
2. *To what amount of compensation, if any, is the claimant entitled?*

After recording the evidence and hearing the parties, the tribunal found that the accident did occur due to rash

and negligent driving on the apart of the driver of truck registration No. U.S.R. 2936. It further found that the claimant is entitled to Rs. 4,000/- as compensation on account of injuries suffered by her in accident. Aggrieved by said award, this appeal was preferred by the Insurance Company.

5. I heard learned counsel for the parties and perused the record.

6. Perusal of the record shows that soon after the accident when claimant- Kusum Lohani was medically examined, she was found to have suffered following injury, which was recorded in her medical report:-
"Lacerated wound 2 cm X 5 cm X bone deep over outer side of right leg on the lower portion."

The said injury was got proved not only by the oral evidence of the claimant but also corroborated by Dr. N.B. Pant, who was examined by the tribunal. Apart from above injury, the claimant complained to the Doctor, as recorded by him that she was suffering pain over right side of her face. Though D.W. 1 Narain Singh denied being rash and negligent in driving the vehicle but in a populated area when a young girl was crossing the road if he could not control the truck and dashed with the bicycle, it cannot be said that he was not rash and negligent in driving the vehicle. This Court feels that learned trial court has rightly believed the statement of D.W.2- Kusum Lohani, regarding rash and negligent driving on the part of the driver of the vehicle. As to the amount for compensation also, an amount of Rs. 4,000/- with 6% interest thereon cannot be said to

be unreasonable in the facts and circumstances of the case. Tribunal has rightly awarded Rs. 1,000 on account of pain and suffering, Rs. 200 for medicines purchased, Rs. 300 for loss in studies and Rs. 2,000 for mental shock, suffered by the claimant apart from Rs. 500 for diet money (total Rs. 4,000/-).

7. For the reasons as discussed above, there is no error of law or that of fact in the impugned judgment, which requires interference by this Court. Accordingly, the appeal is liable to be is dismissed. The same is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 20th March, 2006
Sweta